

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AMAZING SPACES, INC.

Plaintiff,

v.

METRO MINI STORAGE AND
LANDMARK INTEREST CORPORATION

Defendants.

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CASE NO. 4:08-cv-00629

**DEFENDANTS' MOTION FOR ORDER CANCELING
FEDERAL TRADEMARK REGISTRATION**

Defendants Landmark Interest Corporation ("Landmark") and Metro Mini Storage ("Metro") file this Motion for Order Canceling Federal Trademark Registration and would show the Court as follows:

1. This lawsuit arose out of a dispute claiming infringement of an alleged star trademark registered on the U.S. Patent and Trademark Office's Principal Register as Federal Registration Number 2,859,845. This lawsuit was brought by the registered owner of the mark, Plaintiff Amazing Spaces, Inc. The Court entered summary judgment against Amazing Spaces, holding that the star mark (Federal Registration Number 2,859,845) was not entitled to trademark protection because it was neither inherently distinctive nor distinctive through secondary meaning. *See* Memorandum and Opinion, September 28, 2009, Docket No. 54.

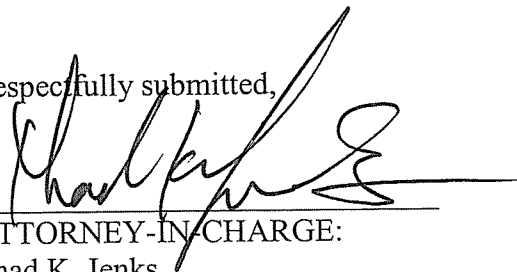
2. "In any action involving a registered mark the court may determine the right to registration, order the cancellation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action." 15 U.S.C. § 1119.

3. The Principal Register is maintained by the U.S. Patent & Trademark Office for “trademark[s] by which the goods of the applicant may be distinguished from the goods of others.” 15 U.S.C. § 1052. A mark that is not distinctive of the applicant’s goods or services may not be registered on the Principal Register. 15 U.S.C. §§ 1052, 1052(f).

4. This Court has held that Plaintiff Amazing Spaces’ star mark is “not entitled to trademark protection” because it is “not inherently distinctive and does not act as an indicator of origin” and because “there is no evidence that the star mark itself denotes to the consumer a single thing coming from a single source.” *See* Memorandum and Opinion [Docket No. 54], at 2, 15, 22 [internal quotations omitted]. As such, Amazing Spaces’ star trademark is not entitled to registration on the Principal Register.

5. So that it is clear that Defendants Landmark and Metro and others have the right to use the Texas star, Defendants request that the Court: (1) enter an order canceling Federal Registration Number 2,859,845; (2) direct the Clerk of Court to provide a certified copy of the order to the Director of the U.S. Patent and Trademark Office under 15 U.S.C. § 1119 for appropriate cancellation action; and (3) instruct the U.S. Patent and Trademark Office to record the order canceling the registration and cancel Plaintiff Amazing Spaces, Inc.’s Federal Registration Number 2,859,845.

Respectfully submitted,



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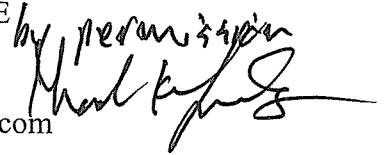
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record as set forth below by *Notice of Electronic Filing* and *Certified Mail/Return Receipt Requested and/or Regular Mail* on this the **9th** day of **October, 2009**.

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